

106.11. DEPARTMENT-FURNISHED MATERIAL.

The Contractor shall furnish all materials required to complete the work, except those specified in the Contract as being furnished by the Department.

Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the Contract.

The cost of handling and placing all materials after they are made available to the Contractor shall be included in the Contract price for the bid item in connection with which they are used.

The Contractor is responsible for the storage, handling, and security of all material made available to him/her, and deductions will be made from any monies due him/her for any shortages or deficiencies, from any cause, for any damage which may occur after delivery, and for any demurrage charges.

106.12. GUARANTEES AND WARRANTIES.

The Contractor shall obtain and assign to the Department all manufacturers' or producers' warranties or guarantees on all items, materials, electrical or mechanical equipment consistent with those provided as customary trade practice. Additionally, the Contractor shall furnish a Contractor's warranty or guarantee providing that all mechanical and electrical equipment and material, light bulbs excepted, furnished by the Contractor shall be free from any defects or imperfections in workmanship and materials for a period of six (6) months after acceptance by the Department and the local government. Should any defect develop during this six (6) months performance period, the malfunction or defect shall be corrected by and at the expense of the Contractor, including all labor, materials, and associated costs.

The Contractor shall supply manuals for all pieces of equipment included in the Project. Such manuals shall include operational procedures, complete nomenclature, wiring diagrams, schematics showing test voltages or procedural methods, a functional description of circuits, parts lists, cross reference to standard part numbers, flow diagrams, and, where appropriate, testing procedures and other pertinent data.

The provisions of this section shall not be construed in lieu of the requirements of the Maintenance Bond as found in state funded contracts, but run concurrently and are included therein.

SECTION 107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01. LAWS, RULES AND REGULATIONS TO BE OBSERVED.

The Contractor shall keep fully informed with, and observe and comply with all of the following that, (1) individuals engaged or employed on the Project, or (2) affects the conduct of the work on the Project:

Federal and State laws;
Local laws and ordinances; and
Regulations, orders and
decrees of bodies or tribunals having any jurisdiction or authority.

The Contractor shall protect and indemnify the Department and its representatives against any claim or liability arising from the violation of any of the above listed items, whether violated by the following companies or any employees of the following companies:

The Contractor
Subcontractor
Suppliers of materials or services
Any others engaged by the Contractor

All laws and ordinances as well as Title 29, Title 30, and Code of Federal Regulations, Part 1926 - Safety and Health Regulations for Construction (OSHA), whichever is the most restrictive, shall be followed in the use, handling, loading, transportation, and storage of explosives and blasting agents. The Contractor shall comply with Federal, State and local laws, rules and regulations that set forth unlawful employment practices including that of discrimination because of race, religion, color, sex, or national origin, and that define actions required for Affirmative Action and Minority (Disadvantaged) Business programs.

Work within or adjacent to a State or National Forest shall be accomplished under the regulations of the State Fire Marshall, Conservation Commission, Forestry Department, or other authority having jurisdiction governing the protection of forests.

The Engineer is to be notified immediately in writing if any discrepancy or inconsistency is discovered between the Contract and any law, ordinance, regulation, order or decree except as noted in Subsection 107.04.

107.02. PERMITS AND LICENSES.

In the prosecution of highway construction Contracts awarded by the Department, the Contractor will not be required to obtain work permits or licenses for operations, upon highway right-of-way, outside of or within the corporate limits of cities or towns.

107.03. PATENTED DEVICES, MATERIALS AND PROCESSES.

The Contractor's use or employment of any of the following that are covered by letters of patent or copyright shall be provided for by suitable legal agreement with the patentee or owner.

Design(s)	Process(es)
Device(s)	Trademark(s)
Material(s)	Copyright(s)

The Contractor and Contract Surety shall indemnify and save harmless the Department, and affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented or copyright item listed above.

The Contractor shall indemnify the Department for costs, expenses, and damages that may be obligated for payment by reason of an infringement during the prosecution of the work or after completion of the Project.

107.04. FEDERAL AID PARTICIPATION.

When any Federal laws, rules, or regulations are in conflict with any provisions of a federally assisted Contract, the Federal requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions.

If there is Federal participation in the cost of the Contract work, the work shall be under the supervision of the Department but subject to the inspection and approval of the proper officials of the United States Government. Inspections made by authorized Federal representatives shall not make the United States Government a party to the Contract and will not interfere with the rights of the Contract parties.

107.05. PUBLIC CONVENIENCE AND SAFETY.

Construction shall be conducted in a manner so obstructions to traffic are minimized. The safety and convenience of the public and the protection of persons and property shall be provided as specified under Subsection 104.07. The safety provisions of all laws, rules, codes, and regulations applicable to the class of work being performed shall be followed. No public road shall be closed except by express permission of the Engineer.

If the above requirements are not complied with, the Engineer may issue a shut down order and may do such work as required for the safety of the traveling public and deduct the cost from any monies due the Contractor for work performed on the Project.

107.06. BARRIERS, BARRICADES, AND WARNING SIGNS.

The Contractor shall provide, erect, and maintain barriers, barricades, lights, signals, signs, and other traffic control devices, and take necessary precautions to protect the work and safety of the public. Highway sections closed to traffic shall be protected by effective barriers and barricades. Obstructions to the normal flow of traffic shall be clearly delineated during darkness. Warning signs shall be provided to control and direct traffic.

The Contractor shall erect warning signs in advance of operations that may interfere with the use of the road by traffic and where new work crosses or coincides with an existing road. Warning signs shall be placed according to the Project traffic control plan and maintained in accordance with the Contract. Signs, barriers, barricades, lights, or other protective devices shall not be dismantled or removed without permission of the Resident Engineer.

Barriers, barricades, warning signs, lights, temporary signals, and other protective devices shall meet the MUTCD and Section 880-Traffic Control.

107.07. USE OF EXPLOSIVES.

When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care to protect life, property, and completed work. When using explosives, the Contractor shall comply with any and all laws and ordinances governing such use. The Contractor shall assume all risks and shall be solely responsible for any and all damages resulting from the use or storage of the explosives on the Project.

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked **“Dangerous Explosives.”** Where no local laws or ordinances apply, storage shall be provided in accordance with Occupational Safety and Health Act (OSHA) regulations, but not closer than 1000 feet (300 meters) from any building, camping area or place of human occupancy.

The Contractor shall notify the Resident Engineer, property owners, public utilities and railroads having facilities adjacent to the site of the work, of his intentions to use explosives and the location, date, time, and approximate duration of the blasting. The notice shall be given sufficiently in advance to enable the owners and companies to take any steps as they may deem necessary to protect their property from damage or injury.

The Contractor shall erect suitable warning signs on all roads alerting the public in the immediate vicinity of blasting operations. The signs shall also include a warning that all portable radio transmitters, cellular telephonic devices and any other electronic transmitting device should be turned off while in the vicinity. If required, the Contractor shall control traffic by use of flaggers and guards in the danger zone of blasting.

107.08. PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.

Public and private property shall be preserved in the prosecution of the work. Land monuments and property marks shall not be moved, disturbed or damaged until the Resident Engineer has witnessed or referenced their location.

The Contractor is responsible for damage to public or private property resulting from any act, omission, neglect, or misconduct in the Contractor's method of executing the work, defective work or materials, or nonexecution of the Contract. This responsibility shall not be released until the Project has been accepted.

Damaged property shall be restored to a condition similar or equal to that existing before the damage or injury occurred. The repairing, restoring, rebuilding, or making good such damage or injury shall be at the Contractor's expense.

When construction operations encounter remains of prehistoric dwelling sites or artifacts of historical or archaeological significance, the operations shall be temporarily discontinued. The Resident Engineer will contact the State archaeological authorities to determine the disposition of the remains or artifacts. When directed, the Contractor shall excavate the site to preserve the artifacts and remove and deliver them to the custody of the proper State authorities. Such work will be paid for as extra work and Contract adjustments will be made according to Subsection 104.06.

107.09. FOREST, PARK, AND PUBLIC LAND PROTECTION.

In carrying out work within or adjacent to State or National Forests, Parks, or Public Lands, the Contractor shall comply with all regulations of the State Fire Marshal, Conservation Commission, Forestry Department, or other authority having jurisdiction. He/She shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction

camp, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the duly authorized official.

The Contractor shall take all reasonable precautions to prevent and suppress forest fires and shall require his/her employees and subcontractors, both independently and at the request of the authority having jurisdiction, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a Forest official at the earliest possible moment of the location and extent of any fires seen by them.

107.10. THIRD PARTY BENEFICIARY CLAUSE.

It is specifically agreed between the parties executing this Contract that it is not intended by the Contract provisions to create the in public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the provisions of the Contract.

107.11. RESPONSIBILITY FOR DAMAGE CLAIMS.

The Contractor shall protect, indemnify, save and hold harmless the State of Oklahoma, the Commission, the Department, their officers, agents, and employees from all suits, actions or claims of any kind or character brought because of injuries or damages received or sustained by any person, persons, or property on account of any operations of the Contractor, his/her agents, employees, his/her subcontractors or any others authorized by the Contractor to perform work on the Project.

The Contractor shall carry insurance of the following kinds and amounts on all Department Contracts:

- (a) **Contractor's Public Liability and Property Damage Liability Insurance.** The Contractor shall furnish satisfactory evidence to the Department that, with respect to the work to be performed by him/her under the Contract, he/she carries regular Contractor's Public Liability Insurance providing for a combined amount of not less than one million (\$1,000,000) dollars of coverage for all damages arising out of bodily injury, death, and property damage for each occurrence with an aggregate limit of two million (\$2,000,000) for the term of the policy or as otherwise specified in the bid documents. If required, the Contractor shall have the Department endorsed as an additional named insured on the Contractor's Public Liability and Property Damage Liability Policy to the extent of the State's liability under the provisions of the Governmental Tort Claims Act. (51 O.S. Section 151 et. seq.)
- (b) **Insurance for Subcontractor's and Contractor's Protective Public Liability and Property Damage Liability Insurance.** In the event that any of the work to be performed by the Contractor on the Project is sublet or assigned, or is otherwise to be performed by any one other than the Contractor's own employees, then such insurance shall cover all operations of any such contractor of any tier and shall be maintained until final acceptance of the Contract.
- (c) **Workers' Compensation Insurance and Employers' Liability Insurance.** The Contractor shall furnish satisfactory evidence to the Department that, with respect to the work to be performed by him/her on the Project, he/she carries regular Workers' Compensation and Employers' Liability

Insurance covering his/her liability under the Workers' Compensation Law of the State of Oklahoma. The Contractor shall maintain the aforementioned insurance in full force and effect for the duration of the Contract. Should the Contractor fail or neglect to maintain the aforementioned insurance, the Department specifically reserves the right to withhold all funds due and owing the Contractor until such time as the required insurance is in effect.

- (d) **Railroads' Protective Liability and Property Damage Insurance.** In addition to the above, the Contractor shall furnish satisfactory evidence to the Department that, with respect to the work to be performed by him/her under the Contract, he/she has provided for and on behalf of the Railway Company or Railway Companies involved, Protective Public Liability and Property Damage Liability Insurance in an amount as may be required by the Railway Company, which amount shall be specified in the bid documents. Policies shall not include liability for negligence on the part of the Railway Company, its agents or employees, except as set out in Coverage A, B, or C of the form of policy, or amendments thereto, referred to under paragraph 6 below. This insurance applies to each and all Railway Companies involved in the work.
- (e) **General.** The insurance hereinbefore specified shall be acquired from insurance companies properly licensed by the State of Oklahoma to provide such coverage in the State of Oklahoma, during all times when work is being carried on under the terms of the Contract, until all work required to be performed under the Contract is satisfactorily completed as evidenced by the formal acceptance by the Department.
- (f) **Form of the Railroad Protective Liability Policy.** For the purpose of uniformity, the American Association of State Highway and Transportation Officials (AASHTO), with the assistance of the Association of American Railroads (AAR), the Federal Highway Administration (FHWA), the National Bureau of Casualty Underwriters of New York, and the Mutual Insurance Rating Bureau of New York, has drafted the:

STANDARD PROVISIONS FOR GENERAL LIABILITY POLICIES RAILROAD PROTECTIVE LIABILITY FORM (STATE OR FEDERAL HIGHWAY PROJECTS)

Copies of this form are available upon request from the Office Engineer of the Oklahoma Department of Transportation.

The Contractor shall furnish the original and one copy of the Railroad Protective Liability Policy and two copies of Certificate of Insurance, indicating the amounts of coverage in effect, to the Office of Rail Programs of the Department, for submission to the Railroad Company for approval.

Any questions by the Contractor or his/her Surety regarding this insurance should be directed to the Office of Rail Programs, 200 Northeast 21st Street, Oklahoma City, Oklahoma 73105.

107.12. PERSONAL LIABILITY OF DEPARTMENT EMPLOYEES.

The Department's authorized representatives are acting solely as agents and representatives of the Department when carrying out and exercising the power or authority granted to them under the Contract. While acting within the scope of their employment, Department representatives shall not be liable for actions taken on behalf of the Department, either personally or as Department employees.

107.13. NO WAIVER OF LEGAL RIGHTS.

The Department shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not, in fact, conform to the Contract. The Department shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or his/her Sureties, or both, such damage as it may sustain by reason of Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Department, or any representative of the Department, nor any payment for, or acceptance of, the whole or any part of the work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver of any portion of the Contract, or of any power herein reserved, or of any right to damages. Acceptance shall be final and conclusive except as otherwise provided in the Specifications, or as regards latent defects, or frauds, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty. Latent defects are nonconformities included in the completed Contract work which were not visible or apparent at the time of construction and remained hidden and dormant until discovery of the nonconformity. Upon discovery of a disputed nonconformity in the completed Contract work, which the Department has designated as a Latent Defect, the Department and Contractor agree to submit to arbitration whether or not the disputed nonconformity in the Contract work is a Latent Defect. The arbitration shall be administered in accordance with the dispute resolution procedure, as incorporated in the Contract. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Nothing contained in this section shall operate as a waiver or extension of any applicable statute of limitations with respect to the time within which an action may be brought for the breach of a Contract.

107.14. HAZARDOUS MATERIAL.

If any abnormal condition is encountered or exposed that indicates the presence of a hazardous material or toxic waste, construction operations shall be immediately suspended in the area and the Resident Engineer notified. Work shall be continued in other areas of the Project unless otherwise directed by the Resident Engineer.

Abnormal conditions include but are not limited to the following: presence of barrels; obnoxious odors; excessively hot earth; smoke; or any other condition that indicates a hazardous material or toxic waste. These conditions shall be treated with extreme caution.

Disposition of the hazardous material or toxic waste shall be made under the requirements and regulations of the applicable State agency. Work required to dispose of these materials shall be performed under a supplemental agreement. If the waste material disposal requires special procedures, the Department will make arrangements to dispose of the material.

107.15. STORMWATER MANAGEMENT.

The Contractor and the Department shall be jointly responsible as Co-Permittees for compliance with the requirements of the Department of Environmental Quality (DEQ) general permit for construction

concerning Stormwater Management on State Construction Project Right-of-Ways, with assignment of responsibilities as follows:

The Department's role as Co-Permittee shall be that of the Owner. This shall be limited to development of the original Stormwater Management Plan (SMP) that shall be included in the Project Plans. For Projects that do not include a specific SMP, the Contractor shall use the applicable portion of the Plans, Special Provisions and the Standard Specifications for the SMP.

The Contractor's role shall be that of the Operator having day-to-day responsibilities for implementation of the SMP for the Project. The Contractor shall be responsible for initiating any modification to the original permit connected with the location of his/her storage yard, plant sites and borrow areas located on or off the State right-of-ways. Modifications to the original permits may require modification of an existing SMP or development of an additional SMP.

The Contractor shall be responsible for submitting the Contractor's copy of the Notice of Intent (NOI) to the Office Engineer with the Contractor-executed Contract.

When the permanent erosion control measures have stabilized the project to not less than 70 percent, the Contractor shall submit to the Resident Engineer a Notice of Termination (NOT). The Resident Engineer shall assemble and submit NOTs to the DEQ. This action transfers the operational responsibility for Stormwater Management to the Department or the local government entity, as applicable.

SECTION 108 PROSECUTION AND PROGRESS

108.01. SUBLETTING OF CONTRACT.

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or Contracts or any portion thereof, or any of his/her rights, title, or any interests therein, without written consent of the Director or his/her authorized representative. In case such consent to Subcontract is given, the Contractor will be permitted to sublet a portion of the work as specified, but shall perform with his/her own organization, work amounting to not less than fifty (50) percent of the Contract amount, unless the Contract shall allow a greater percentage to be subcontracted. Any items designated in the Contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor with his/her own organization.

Requests for permission to sublet, or otherwise dispose of any portion of the Contract work shall be in writing to the Resident Engineer. Requests shall be accompanied by a statement showing that the organization which will perform the work is particularly experienced and equipped for such work. All subcontracts shall incorporate and include all federally imposed requirements pertaining to equal opportunity, disadvantage business opportunity, Title VI of the Civil Rights Act of 1964 of the Davis-Bacon Act, and such other requirements as may be contractually imposed. The Contractor shall give assurance that the minimum wage for labor as stated in his/her Proposal shall apply to labor performed on all work sublet. No subcontracts, or transfer of Contract, shall in any case release the Contractor of his/her liability under the Contract and bonds.